IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 12770 of 2007 (O&M)

DATE OF DECISION: 17.9.2007

M/s Harwinder Singh and Sons and another

…Petitioners

`Versus

The State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sukhdip S. Brar, Advocate
for the petitioners.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution sought direction to respondent Nos. 2 and 3, namely, the Excise and Taxation Officer (Mobile Wing), Ludhiana and the Assistant Excise and Taxation Commissioner, Patiala respectively, to release goods detained on 10.8.2007. When the matter came up for hearing before this Court on 20.8.2007, we have passed the following order:-

> " Learned counsel for the petitioners has submitted that the goods belonging to the petitioners, which were being transported from Shambhu to Rajpura and Rajpura to Sirhind in three trucks have been detained along with trucks since 10.08.2007. He has relied upon Section 51(6a) of the Punjab Value Added Tax, 2005 and

submitted that goods cannot be detained for more than 72 hours. According to the learned counsel, once the petitioners have offered to furnish security or execution of a bond for the release of goods and trucks in the prescribed form, then no officer was entitled to detain the goods beyond 72 hours.

Notice of motion.

Mr. Amol Rattan Singh, Additional Advocate General, Punjab, who is present in the Court, accepts notice on our asking.

In the meanwhile, the goods along with the trucks belonging to the petitioners shall be released without any further delay by accepting security or execution of a bond in the prescribed form.

A copy of the order be given dasti on payment of usual charges.

In the meanwhile, learned counsel for the petitioners shall furnish three copies of the paper book to the learned State counsel during the course of the day.

List again on 10.09.2007."

In pursuance to the aforementioned order, the goods have been released by accepting the surety as contemplated under Section 51(6)(a) of the Punjab Value Added Tax Act, 2005 (for brevity, 'the Act').

The respondents have filed their reply disclosing that, in fact, the trucks belonging to the petitioners were being followed from Karnal onwards as some secret information was received. When the

trucks belonging to the petitioners jumped the ICC Shambhu Barrier, at this stage, the trucks were detained. All these details are available in the order now passed by the Designated Officer i.e. respondent No. 3. It has been pointed out that once attempt has been made by the trucks belonging to the petitioners to jump the ICC Barrier at Shambhu then it has to be regarded as an attempt to evade tax within the meaning of Section 51(6)(b) read with Section 51(7)(c) of the Act and that the petitioners have to furnish cash or bank guarantee or a Crossed Bank Draft for an amount equal to the amount of penalty imposable. The order passed by respondent No. 3 is further subject to challenge in appeal under Section 62 of the Act.

In view of the above, we modify our order dated 20.8.2007 and direct the petitioners to comply with the provisions of Section 51(7)(c) of the Act as the case of the petitioners at this stage cannot be deemed to have been covered by Section 51(6)(a) of the Act as noticed by us in our order dated 20.8.2007. Accordingly, the writ petition is disposed of by directing the petitioners to furnish bank guarantee or deposit cash or Demand Drafts as contemplated by Section 51(7)(c) of the Act, which shall remain subject to the result of appeal and any further proceedings which may be filed. It is, however, made clear that nothing observed in this order shall be construed as an opinion expressed on the merits of the controversy.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

September 17, 2007
Pkapoor